

4273.

BOARD OF EDUCATION—EMPLOYMENT OF TEACHERS DISCUSSED—  
TEACHER UNAUTHORIZED TO HIRE A SUBSTITUTE—BOARD  
MAY PAY SUCH SUBSTITUTE TEACHER WHEN.

*SYLLABUS:*

1. *County superintendents of schools are not constituted by law agents for local boards of education in the employment of teachers for the public schools. It is the duty of county superintendents of schools to nominate persons as teachers in the schools of the county school district, but the actual contracts of employment must be made by the local boards of education in the manner provided by law.*

2. *Before a valid and binding contract of employment between a public school teacher and the board of education may be said to exist, that contract must have been made in accordance with law, that is, by action taken in a duly convened meeting of the board appointing a person to that position and an acceptance of the said appointment by the teacher, or, by the due ratification by the board of education of action previously taken looking to the making of such a contract, which had not been in strict accordance with law.*

3. *Proceedings of a board of education are invalid where the action was taken at a special meeting from which one member was absent, and written notice of said meeting had not been served on each member of the board as provided by Section 4751, General Code.*

4. *A school teacher who is absent from school on account of illness, has no authority to employ a substitute to teach for her so as to bind the board of education of the district.*

5. *When a board of education, with full knowledge of the situation, permits a person to teach in the schools of the district, as a substitute teacher, and later desires to pay such person for the services so rendered, the payment therefor does not constitute an illegal expenditure of public funds, provided the teacher has a proper certificate to teach in the said school.*

COLUMBUS, OHIO, April 23, 1932.

HON. CAMERON MEACHAM, *Prosecuting Attorney, Portsmouth, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

“Recently a District Board of Education in this county employed a school teacher as a substitute and the County Superintendent also employed one. Both teachers occupied the school building and each taught part of the pupils. Out of this situation several questions have arisen, upon which I want the opinion of your office:

First: Can the members of a district board of education, by a vote, authorize the County Superintendent of Schools to place substitute teachers in such district schools?

Second: When a special meeting of a district board of education is called by the president of said board and he instructs the clerk to notify members of the board in writing as to the time and place of meeting, and she fails to do so, but a quorum is present, is this a legal meeting?

Third: If a school teacher is forced to be absent from her school on account of illness, does such teacher have any authority to employ a substitute teacher to teach for her?

Fourth: Can a board of education pay a substitute teacher sent to the school by a County Superintendent or one sent by a teacher employed by said board when such teacher was hired by the board at a meeting when the members thereof were not notified in writing as to its special meeting?"

It is no part of the duties of a county superintendent of schools to employ teachers for the public schools of the districts comprising the county school district or to make any other contracts which the law directs should be made by the several boards of education. It is the duty of a county superintendent of schools to supervise the schools of the county school district, and he is by statute constituted the executive officer of the county board of education. Supervision of the schools does not include the making of contracts of employment with teachers or any other employes of the several boards of education. A county superintendent of schools is not in any respect constituted by law the agent for the several boards of education of the district comprising the county school district. An attempt on the part of a county superintendent of schools to act as such agent, or to employ teachers for any of the districts in the county school district, whether regular teachers or substitutes, is a nullity unless his acts are later duly ratified by the local district board of education. The employment of substitute teachers is no different in this respect than that of other teachers.

Section 7690, General Code, provides that each city, village or rural board of education shall have the management and control of all the public schools of whatever nature or character in the district.

Section 7690-1, General Code, provides that each board of education shall fix the salaries of all the teachers in the district.

Section 7705, General Code, provides specifically that the board of education of each village and rural school district shall employ the teachers of the public schools of the district. This section further provides that the county superintendent of schools or an assistant shall nominate the teachers for the public schools, but this is quite different from employing them.

Contracts with teachers, in order to be valid and binding must be made by the board of education of the district for the teaching of whose schools the teacher is employed. Neither the county superintendent of schools nor a local teacher has any authority whatever, as such, to employ either regular teachers or substitute teachers. Any such employment, to be made legal and binding, should be made by a board of education at a regular meeting of the board or at a special meeting duly called. Section 4751, General Code, provides:

"A special meeting of a board of education may be called by the president or clerk thereof or by any two members, by serving a written notice of the time and place of such meeting upon each member of the board either personally or at his residence or usual place of business. Such notice must be signed by the official or members calling the meeting."

A meeting other than a regular meeting not properly called, as provided by the above statute, at which one or more members are not present, is not a legal meeting, and no valid business may be transacted at such a meeting.

In the case of *Kattman et al vs. Board of Education*, 15 C. C., N. S., 232, it was held:

“Proceedings of a school board providing for an issue of bonds are invalid, where the action pertaining thereto was taken at a special meeting from which one member was absent, and no written notice of the meeting had been served on each member of the board either personally or at his residence or usual place of business.”

Action taken by a board of education at a special meeting, which lacked some of the essentials of having been properly called, may later be ratified at a legal meeting. *McQuillin on Municipal Corporations*, Section 641, page 1357; *Trusler on Essentials of School Law*, page 351; *Jordan vs. School District*, 38 Me., 164.

Although no valid and binding contract may be made with a teacher except by action of the board of education, as provided by law, yet if the board should authorize the county superintendent of schools, or anyone else, to supply a teacher for a school within the district, and, with full knowledge of the situation, the board permits such person to teach, it is not an illegal expenditure of public funds, in my opinion, to pay the person for the services rendered, providing the services are satisfactory and such teacher has a proper certificate to teach the school wherein the services are rendered. Under those circumstances, the teacher, not having been regularly employed, as provided by law, could not be said to have a contract with the board of education and could not recover in an action at law for the services rendered. The board may, however, in my opinion, accept the services so rendered, and if it does so with full knowledge of the facts, it should, in common honesty, pay for the same.

I am therefore of the opinion, in specific answer to your questions:

1. In order to make a valid and binding contract with a teacher, for teaching in the public schools, the contract must be made in accordance with law, that is, by the board of education of the district, in a duly convened meeting of the board. A board may lawfully, in my opinion, authorize the county superintendent of schools, or anyone else, to place teachers, either substitute teachers or regular teachers, in the schools of the district, and may later ratify any action taken by the person so authorized. Unless, however, the placing of teachers in this manner in the schools of the district is duly ratified by the board of education in a meeting of the board held in accordance with law, no binding obligation arises against the board for the payment of the said teachers.

2. Proceedings of a board of education are invalid where the action was taken at a special meeting from which one member was absent, and written notice of said meeting had not been served on each member of the board as provided by Section 4751, General Code.

3. A school teacher who is absent from school on account of illness, has no authority to employ a substitute to teach for her so as to bind the board of education of the district.

4. When a board of education, with full knowledge of the situation, permits a person to teach in the schools of the district, as a substitute teacher, and later desires to pay such person for the services so rendered, the payment therefor does not constitute an illegal expenditure of public funds, providing the teacher has a proper certificate to teach in the said school.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*